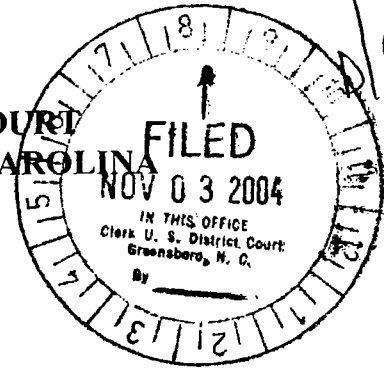


IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



Rodney Harvey,

Plaintiff,

v.

United States of America,

Defendant(s).

1:04 CV 01016

1:03CR105-1

**ORDER AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff, a federal prisoner, has submitted a motion for return of property pursuant to Fed. R. Crim. P. 41(e). Such a motion filed after the completion of criminal proceedings is a civil action subject to the fee provisions of 28 U.S.C. § 1915. See United States v. Jones, 215 F.3d 467 (4<sup>th</sup> Cir. 2000). Venue for such a motion is proper in the district where the seizure occurred. See United States v. Garcia, 65 F.3d 17 (4<sup>th</sup> Cir. 1995). Plaintiff has failed to submit either the \$150.00 filing fee or an application to proceed in forma pauperis. In addition, plaintiff's motion is not on the required form for this Court. This motion should, therefore, be dismissed without prejudice to plaintiff submitting his action on the proper forms along with either the \$150.00 filing fee or a completed application to proceed in forma pauperis. To assist plaintiff, the Clerk will send plaintiff the Motion for Return of Property forms, instructions and an application to proceed in forma pauperis.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

**IT IS THEREFORE ORDERED** that in forma pauperis status is granted for the sole purpose of entering this order. The Clerk is instructed to send plaintiff Motion for Return of Property forms, instructions, an application to proceed in forma pauperis, and a copy of

pertinent parts of Fed. R. Civ. P. 8 (i.e. Sections (a) & (e)).

**IT IS RECOMMENDED** that this action be filed and dismissed sua sponte without prejudice to plaintiff filing a civil complaint, on the proper Motion for Return of Property forms, which corrects the defects cited above.

November 3, 2004



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P. Trevor Sharp, U.S. Magistrate Judge